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**OFFICE OF PETITIONS**

In re Application of :  
Rusch et al. : DECISION ON PETITION  
Application No. 09/685,361 :  
Filed: October 10, 2000 :  
Atty Docket No. GR 98 P 1507 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR §1.137(a), filed December 12, 2006, in the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file corrected drawings in response to the Notice Regarding Drawings mailed March 26, 2003. This Notice set a non-extendable two-month time period for reply. No proper reply having been received and no extensions of time obtainable, the application became abandoned effective March 27, 2003. A Notice of Abandonment was mailed on July 11, 2003. (Applicants timely filed a response to the Notice of Allowability mailed August 21, 2002. The Notice of Abandonment erred in noting a failure to file new formal drawings as required in the Notice of Allowability).

It is noted that applicants filed a REQUEST FOR RESCISSION OF ABANDONMENT on July 28, 2003. Having received no response, applicant states that status inquiries were filed on August 11, 2005 and October 4, 2005 to no avail. Still, having received no response and after determining that their REQUEST FOR RESCISSION

OF ABANDONMENT was directed to the wrong Notice<sup>1</sup>, on December 12, 2006, the instant petition was filed.

Petitioner maintains that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unavoidable. Petitioner asserts the abandonment was unavoidable because the Attorney for Applicants was unaware of both the Notice Regarding Drawings mailed March 26, 2003 and the corresponding deadline. In support thereof, practitioner submits a copy of counsel's date book for the relevant due date, a copy of the application file jacket, a declaration by counsel's staff supervisor corroborating non-receipt of the Notice, and a response to the Notice.

35 U.S.C. 133 provides that the Director may revive an application if the delay in replying to the outstanding Office action is shown to the satisfaction of the Director to have been unavoidable. A grantable petition to revive an unavoidably abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in \$1.20(d)) required pursuant to \$1.137(d).

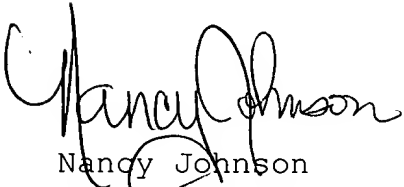
The petition includes the required reply in the form of a replacement drawing sheet, payment of the petition fee and a showing of unavoidable delay. No terminal disclaimer is required. The facts and circumstances of the abandonment as set forth on petition have been considered, and it is concluded that petitioner has met his burden of establishing that the entire delay from the due date for the reply until the filing of a grantable petition was unavoidable.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to Publications for consideration of the response, a drawing sheet supplied on petition filed December 12, 2006, and in light thereof, for processing into a patent.

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<sup>1</sup> The Request for Rescission was based on having timely responded to the Notice of Allowability, and was not directed to non-receipt of the Notice Regarding Drawings. Thus, the request was not grantable.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looped initial "N" and a cursive "Johnson".

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions